

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

LARRY DARNELL JONES,

Plaintiff,

v.

Case No. 2:04-cv-265  
HON. GORDON J. QUIST

GEORGE PRAMSTALLER, et al.,

Defendants.

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**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on May 16, 2005. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

The Magistrate Judge recommended dismissal of plaintiff's claims against defendants Pramstaller, Wright and Larson because the claims had been dismissed in prior cases. *See Jones v. Pramstaller*, No. 2:03-cv-120, and *Jones v. Pramstaller*, No. 2:04-cv-213. Plaintiff's Eighth Amendment claim against Dr. Pramstaller was dismissed under the doctrine of claim preclusion because the claim was previously dismissed on the merits in another action. This is at least the third time plaintiff asserts this identical claim. The claims against defendants Wright and Larson were dismissed previously on statute of limitation grounds. Plaintiff argues that a state court judgment tolled the statute of limitations on his First Amendment claims. Plaintiff has attached the state court order to his objections. Plaintiff has not explained how a state court order can toll the statute of

limitations on a federal cause of action, whether in fact he was a party to the state court action and whether his claim was pending in the state court action. More importantly, the order involves only access to the court claims under the Michigan Constitution and clearly was “not intended to affect the jurisdiction of federal courts with regard to federal claims or orders.” Agreement to Resolve Plaintiff’s claims regarding access to courts, plaintiff’s exhibit number 3 at 13. Accordingly, plaintiff’s First Amendment claims are clearly barred by the statute of limitations and his claim that the statute of limitations was tolled by the state court order lacks merit. Similarly, plaintiff’s request for a temporary restraining order and preliminary injunction lacks merit because plaintiff has failed to show that he is being denied access to the courts or that he will suffer irreparable harm.

Plaintiff has also asserted motions to compel against defendant Pramstaller. Those motions will be dismissed.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

Dated: August 16, 2005

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/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE